

MEMORANDUM OF UNDERSTANDING

I. PURPOSE

THIS MEMORANDUM OF UNDERSTANDING BETWEEN THE LOGISTICS OFFICE AND THE OFFICE OF THE COMPTROLLER IS FOR THE PURPOSE OF CLARIFYING THE RESPONSIBILITIES AND AUTHORITIES OF THE INDUSTRIAL CONTRACT AUDIT BRANCH, FINANCE DIVISION, OFFICE OF THE COMPTROLLER, AND THE PROCUREMENT DIVISION, LOGISTICS OFFICE, WITH REGARD TO THE NEGOTIATION, ADMINISTRATION, AUDIT AND SETTLEMENT OF AGENCY COST TYPE CONTRACTS AND FIXED PRICE CONTRACTS CONTAINING PRICE REDETERMINATION PROVISIONS.

II. FUNCTIONS AND RESPONSIBILITIES

THE FUNCTIONS AND RESPONSIBILITIES AS STATED HEREIN ARE THOSE WHICH PERTAIN TO THE NEGOTIATION, ADMINISTRATION, AND SETTLEMENT OF CONTRACTS ONLY.

(A) OFFICE OF THE COMPTROLLER

THE OFFICE OF THE COMPTROLLER IS RESPONSIBLE FOR:

- (1) FURNISHING AUDIT SERVICES IN CONNECTION WITH PROPOSED, CURRENT, COMPLETED, AND TERMINATED CONTRACTS EXCEPT THOSE FOR PERSONAL SERVICES.
- (2) FURNISHING ACCOUNTING COUNSEL TO AGENCY OFFICIALS.
- (3) AUDITING CONTRACTORS' VOUCHERS IN THE LIGHT OF AGENCY CONTRACTS AND AMENDMENTS THERE TO.
- (4) ESTABLISHING ACCOUNTING PROCEDURES AND INSTRUCTIONS FOR CONTRACTORS REGARDING BILLING AND ACCOUNTING REQUIREMENTS.
- (5) EFFECTING PROPERLY AUTHORIZED PAYMENTS TO CONTRACTORS ON A TIMELY BASIS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONTRACTS AND AMENDMENTS.
- (6) ASSISTING THE LOGISTICS OFFICE IN MAINTAINING EQUITABLE AND COOPERATIVE RELATIONSHIPS WITH CONTRACTORS.

(B) LOGISTICS OFFICE

THE LOGISTICS OFFICE IS RESPONSIBLE FOR:

- (1) THE PROCUREMENT OF SUPPLIES, EQUIPMENT, AND NON-PERSONAL SERVICES IN ACCORDANCE WITH EXISTING STATUTORY AUTHORITY, LIMITATIONS, AND PROHIBITIONS.
- (2) THE NEGOTIATION, ADMINISTRATION, INSPECTION, AND SETTLEMENT OF AGENCY CONTRACTS.

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- (3) THE MAINTENANCE OF EQUITABLE AND COOPERATIVE RELATIONSHIPS WITH CONTRACTORS.
- (4) THE PREPARATION OF SUCH CONTRACTUAL DOCUMENTS AS WILL PERMIT EXPEDITIOUS PAYMENTS TO CONTRACTORS.

III. POLICY

(A) PRECONTRACT AUDIT

PRECONTRACT AUDITS WILL BE PERFORMED ON ALL COST TYPE CONTRACTS (INCLUDING FIXED PRICE CONTRACTS WITH PRICE REDETERMINATION PROVISIONS), THE TOTAL AMOUNTS OF WHICH ARE IN EXCESS OF \$50,000.00, EXCEPT WHEN ADEQUATE ACCOUNTING DATA ARE AVAILABLE FROM GOVERNMENT AGENCIES IN CONNECTION WITH THE NEGOTIATION AND SETTLEMENT OF GOVERNMENT CONTRACTS. SUCH PRECONTRACT AUDITS WILL INCLUDE AN ACCOUNTING SYSTEM SURVEY AND ADVICE TO THE CONTRACTOR AS TO GOVERNMENT ACCOUNTING METHODS AND PRINCIPLES WHICH MUST BE MET IN MAINTAINING ACCOUNTING RECORDS.

(B) WAIVER OF AUDIT

- (1) THE COMPTROLLER SHALL HAVE DISCRETIONARY AUTHORITY TO AUDIT ANY COST TYPE OR FIXED PRICE CONTRACT CONTAINING PRICE REDETERMINATION PROVISIONS. HOWEVER, WHEN IT IS THE CONSIDERED JUDGMENT OF A CONTRACTING OFFICER THAT THE AGENCY'S INTEREST WOULD BE SERVED BEST BY DISPENSING WITH AN AUDIT PROPOSED BY THE ICAB, HE MAY PREPARE FOR THE CHIEF OF LOGISTICS' SIGNATURE A MEMORANDUM ADDRESSED TO THE COMPTROLLER IN WHICH IT WILL BE RECOMMENDED THAT NO AUDIT BE CONDUCTED AND THE REASONS THEREFOR.
- (2) IN SUCH A CASE, THE CHIEF, ICAB, WILL NOT INITIATE AUDIT ACTION UNTIL THE COMPTROLLER SHALL HAVE AUTHORIZED IT.

(C) CONTRACTUAL PROVISIONS FOR AUDIT

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COST CONTRACTS AND FIXED PRICE CONTRACTS SUBJECT TO PRICE REDETERMINATION WILL CONTAIN A PROVISION FOR AUDIT BY AN AUTHORIZED REPRESENTATIVE OF THE CENTRAL INTELLIGENCE AGENCY

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(D) EXAMINATION OF RECORDS CLAUSE

ALL UNCLASSIFIED CONTRACTS PAYABLE FROM VOUCHERED FUNDS WHICH HAVE BEEN NEGOTIATED WITHOUT ADVERTISING SHALL INCLUDE AN "EXAMINATION OF RECORDS CLAUSE," AS REQUIRED BY 41 U.S.C. 153 (c), GRANTING THE COMPTROLLER GENERAL OF THE UNITED STATES OR ANY OF HIS DULY AUTHORIZED REPRESENTATIVES THE RIGHT TO EXAMINE RECORDS. ALL CLASSIFIED CONTRACTS PAYABLE FROM VOUCHERED FUNDS WHICH HAVE BEEN NEGOTIATED WITHOUT ADVERTISING SHALL INCLUDE A CLAUSE GENERALLY SIMILAR BUT REQUIRING THE CONTRACTING OFFICER'S PRIOR APPROVAL BEFORE THE CONTRACTOR MAKES AVAILABLE HIS RECORDS TO THE COMPTROLLER GENERAL. CONTRACTS PAYABLE FROM UNVOUCHERED FUNDS WHICH HAVE BEEN NEGOTIATED WITHOUT ADVERTISING SHALL INCLUDE A CLAUSE GRANTING THE DULY AUTHORIZED REPRESENTATIVE OF THE CENTRAL INTELLIGENCE AGENCY THE RIGHT TO EXAMINE RECORDS FOR A PERIOD OF THREE YEARS FROM THE DATE OF FINAL PAYMENT.

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(E) SETTLEMENTS

IT IS THE POLICY OF THE AGENCY TO TAKE WHATEVER STEPS ARE NECESSARY PRIOR TO SETTLEMENT TO EFFECT RECONCILIATION BETWEEN THE CONTRACTOR'S CLAIM AND THE AUDIT REPORT.

IV. PROCEDURE

IT IS AGREED THAT THE FOLLOWING METHODS AND PROCEDURES WILL BE FOLLOWED OR CARRIED OUT BY THE TWO OFFICES CONCERNED IN CONNECTION WITH AGENCY CONTRACTS.

(A) AUDIT SCHEDULES

THE OFFICE OF THE COMPTROLLER WILL PREPARE A TENTATIVE AUDIT SCHEDULE AT THE BEGINNING OF EACH FISCAL YEAR AND A COPY WILL BE FORWARDED TO THE LOGISTICS OFFICE. THE AUDIT SCHEDULE WILL TAKE INTO CONSIDERATION EVERY CONTRACT KNOWN TO THE COMPTROLLER'S OFFICE TO BE IN EXISTENCE AT TIME OF PREPARATION. THE LOGISTICS OFFICE WILL REVIEW THE INFORMATION SCHEDULED AND ADD THERETO ANY CONTRACTS THAT ARE IN EXISTENCE WHICH DO NOT APPEAR ON THE SCHEDULE, AND WILL ADVISE THE COMPTROLLER'S OFFICE WITHIN FIVE (5) WORKING DAYS OF THE ADDITIONS NECESSARY TO COMPLETE THE SCHEDULE FURNISHED. ADDITIONALLY, THE LOGISTICS OFFICE SHOULD REQUEST CHANGES IN THE AUDIT SCHEDULE IF INFORMATION IN THEIR POSSESSION INDICATES SUCH ACTION TO BE DESIRABLE. THE ORIGINAL SCHEDULE WILL BE REVISED BY BOTH THE LOGISTICS AND COMPTROLLER'S OFFICES AS CHANGES ARE DICTATED AND SHOULD BE CLOSELY COORDINATED BETWEEN LO PERSONNEL AND EMPLOYEES IN THE INDUSTRIAL CONTRACT AUDIT BRANCH TO PRECLUDE THE NEED FOR FURNISHING A NEW SCHEDULE MORE OFTEN THAN SEMI-ANNUALLY. EACH SCHEDULE PREPARED SHALL RECEIVE THE SAME ATTENTION AS STATED HEREIN.

(B) PREPARATION OF AUDIT REPORTS

AUDIT REPORTS WILL BE PREPARED IN SUCH MANNER AS TO CATEGORIZE EACH EXCEPTION OR SUSPENSION OF A CONTRACTOR'S CLAIM INTO:

- (1) QUESTIONS OF FACT.
- (2) QUESTIONS OF JUDGMENT.
- (3) QUESTIONS OF LAW.
- (4) QUESTIONS OF ACCOUNTING.
- (5) QUESTIONS OF TECHNICAL OPINION AND JUDGMENT.

(c) DETERMINATION OF QUESTIONS

(1) QUESTIONS OF JUDGMENT AND/OR FACT.

CONTRACTING OFFICERS WILL MAKE FINAL DETERMINATIONS ON QUESTIONS OF JUDGMENT OR FACT. SUCH DETERMINATIONS SHALL BE IN WRITING, COPIES OF WHICH SHALL BE FORWARDED TO THE OFFICE OF THE COMPTROLLER.

(2) QUESTIONS OF LAW.

QUESTIONS OF LAW AS TO WHICH THE CONTRACTING OFFICER AND THE CHIEF, ICAB, ARE UNABLE TO AGREE WILL BE REFERRED TO THE GENERAL COUNSEL, WHOSE WRITTEN OPINION SHALL BE BINDING UPON CONTRACTING AND CERTIFYING OFFICERS.

(3) QUESTIONS OF ACCOUNTING.

THE OFFICE OF THE COMPTROLLER WILL MAKE TECHNICAL DETERMINATIONS WITH RESPECT TO QUESTIONS OF ACCOUNTING METHODS AND PROCEDURES AND THE PROPER ALLOCATION OF CHARGES AGAINST AGENCY CONTRACTS.

(4) QUESTIONS OF TECHNICAL OPINION OR JUDGMENT.

THE CONTRACTING OFFICER WILL SEEK AND OBTAIN ADVICE AND COUNSEL OF TECHNICAL REPRESENTATIVES OF THE AGENCY OR FROM OUTSIDE THE AGENCY, AS NECESSARY, IN ORDER TO MAKE FINDINGS OF FACT WITH RESPECT TO TECHNICAL MATTERS. THE CONTRACTING OFFICER IS AUTHORIZED TO MAKE FINAL DETERMINATIONS ON SUCH MATTERS, AND HIS FINDINGS SHALL BE REDUCED TO WRITING AND SHALL BE FINAL.

(d) SETTLEMENTS

THE FOLLOWING PROCEDURE WILL BE FOLLOWED WITH RESPECT TO THE SETTLEMENT OF CONTRACTS (FOLLOWING AN AUDIT, AS REQUIRED):

- (1) CONTRACT NEGOTIATORS AND AUDITORS WILL MEET INFORMALLY FOR THE PURPOSE OF ANALYZING AND MAKING PRELIMINARY DETERMINATIONS WITH RESPECT TO ALLOWANCES, DISALLOWANCES, AND/OR SUSPENSIONS UNDER AGENCY CONTRACTS. AN EFFORT WILL BE MADE BY THESE INDIVIDUALS TO REACH AGREEMENT SATISFACTORY TO BOTH THE LOGISTICS OFFICE AND THE OFFICE OF THE COMPTROLLER.**
- (2) FAILING TO REACH SUCH AN AGREEMENT, THE NEGOTIATOR AND THE AUDITOR WILL IN A JOINT MEETING PRESENT THEIR SEPARATE VIEWS TO THE CONTRACTING OFFICER FOR A DECISION.**
- (3) IF AGREEMENT CANNOT BE REACHED IN MEETINGS AS DESCRIBED IN PARAGRAPH IV (D) (2) ABOVE, THE UNRESOLVED MATTERS WILL BE DISCUSSED BETWEEN THE CONTRACTING OFFICER AND THE CHIEF, FINANCE DIVISION. IF AGREEMENT CANNOT BE REACHED AT THIS LEVEL, THE MATTER WILL BE REFERRED TO THE COMPTROLLER AND THE CHIEF OF LOGISTICS.**

- (4) LETTERS OF PROPOSED SETTLEMENT WILL BE COORDINATED WITH THE OFFICE OF THE COMPTROLLER FOR REVIEW AND COMMENT PRIOR TO EXECUTION. SUCH LETTERS WILL BE RETURNED TO THE LOGISTICS OFFICE WITHIN FIVE (5) WORKING DAYS AFTER RECEIPT.
- (5) IF THE PROPOSED SETTLEMENT IS REJECTED BY THE CONTRACTOR, SETTLEMENT MEETINGS WILL BE ESTABLISHED WHICH WILL BE ATTENDED BY A REPRESENTATIVE OF THE OFFICE OF THE COMPTROLLER. THE CONTRACTING OFFICER WILL ACT AS CHAIRMAN OF THE SETTLEMENT MEETINGS; AND WHEN FINAL DETERMINATIONS ARE REACHED IN SUCH MEETINGS AND CONCURRED IN BY THE REPRESENTATIVE OF THE OFFICE OF THE COMPTROLLER, FINAL PAYMENT WILL BE MADE IN ACCORDANCE WITH SUCH DETERMINATIONS. RESULTS OF SUCH MEETINGS WILL BE REDUCED TO WRITING IN THE FORM OF A MEMORANDUM FOR THE RECORD OR AN AMENDMENT TO THE BASIC CONTRACT, AS APPROPRIATE, AND COPIES WILL BE FORWARDED TO THE OFFICE OF THE COMPTROLLER TO SUPPORT FINAL PAYMENT.
- (6) PAYMENT WILL BE EFFECTED BY THE OFFICE OF THE COMPTROLLER IN THE AMOUNT DETERMINED BY THE CONTRACTING OFFICER, PROVIDED THAT THE TERMS OF THIS MEMORANDUM OF UNDERSTANDING HAVE BEEN FOLLOWED. THAT OFFICE WILL NOT MAKE PAYMENT IN ANY OTHER AMOUNT WITHOUT PRIOR NOTICE TO AND CONCURRENCE IN BY THE CONTRACTING OFFICER.

V. ACCOUNTING BROCHURE

THE OFFICE OF THE COMPTROLLER AGREED TO PREPARE AND PUBLISH AN ACCOUNTING BROCHURE TO BE SUPPLIED TO EACH AGENCY CONTRACTOR AT THE TIME OF THE EXECUTION OF COST TYPE CONTRACTS.

CONCUR:

/s/ E. R. SAUNDERS
COMPTROLLER

22 OCT. 54
DATE

ACTG. CHIEF OF LOG.

19 OCT. 54
DATE

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AUDITOR IN CHIEF

26 OCT. 54
DATE

Asst. GENERAL COUNSEL

19 OCT. 54
DATE

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LO/ACOP/CRH:RR (19 OCTOBER 1954)

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